Filed 12/21/16 Quinn v. Keller CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

TOMMY QUINN, Plaintiff and Respondent, v. CHRISTOPHER KELLER et al., Defendants and Appellants.	D068897 (Super. Ct. No. 37-2014-00028037-CU-PO-CTL)

APPEAL from an order of the Superior Court of San Diego County, John S. Meyer, Judge. Affirmed.

Deuprey Law Firm and Dan H. Deuprey for Defendants and Appellants.

The Gilliland Firm, Douglas S. Gilliland and Summer A. Vicknair for Plaintiff and Respondent.

Christopher and Carie Keller appeal an order denying in part their motion under Code of Civil Procedure section 425.16[1] to strike civil claims brought against them by Tommy Quinn. Quinn's lawsuit was precipitated by his arrest after the Kellers reported to the La Mesa Police Department (LMPD) that Quinn, who was married to Christopher's ex-wife Carla Sottile, sexually abused Christopher and Sottile's two young daughters. The LMPD investigated the allegations but ultimately no criminal charges were filed against Quinn.

Thereafter, Quinn sued the Kellers for violation of Penal Code section 11172, subdivision (a) (part of the California Child Abuse and Neglect Reporting Act (Pen. Code, § 11164 et seq.)), intentional infliction of emotional distress (IIED), abuse of process, and negligence. The Kellers responded by filing an anti-SLAPP motion. The trial court granted the motion with respect to Quinn's claims for abuse of process and negligence. The court denied the Kellers' motion with respect to Quinn's claims for IIED and violation of Penal Code section 11172, subdivision (a), concluding that Quinn had adequately demonstrated a probability of prevailing on those claims. We agree with this conclusion and affirm the order.

---

1 Further statutory references are to the Code of Civil Procedure unless otherwise indicated. Section 425.16 is commonly referred to as the anti-SLAPP (strategic lawsuit against public participation) statute. (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 732, fn. 1.)

FACTUAL AND PROCEDURAL BACKGROUND

A

Underlying Criminal Allegations

In 2012, Christopher shared custody of Christopher and Sottile's then 10 and eight-year-old daughters, H.K and E.K., with Sottile. Sottile and Christopher were engaged in a longstanding dispute in family court over custody of the girls. In August 2012, Christopher reported to the LMPD that H.K. and E.K. had been sexually molested by Quinn. The report was made after H.K. allegedly told Carie that she had awakened in the middle of the night three times while staying at her mother's home to find Quinn lying next to her in bed, fondling her chest and between her legs. According to Carie, H.K. also told Carie that she felt Quinn gyrate against her and felt a lump in his pants pressing against her buttocks. H.K. had not told her mother about these events and said that she was afraid to return to Sottile and Quinn's house. Carie and Christopher also alleged that when Christopher arrived home from work later that day, H.K. told him the same thing that she had told Carie. According to Carie and Christopher, they then spoke separately with E.K., who told them that she also recalled waking up in the night on at least two occasions to find Quinn next to her, rubbing her belly and breathing heavily. E.K. allegedly told Carie and Christopher that she was scared to sleep on the outside of the bed that she shared with H.K. at her mother's home.

According to the Kellers, the following morning, Christopher called the LMPD and reported that his daughters had been molested by Quinn. The person who received the call took basic information from Christopher and arranged for an investigator to

contact him. Christopher later received a call from detective Jason Sieckman and gave Sieckman a detailed account of what he said his daughters had told him.[2] The next day, H.K. and E.K. were separately interviewed by a forensic child psychologist employed by child welfare services. The Kellers were not present during the interviews. Sieckman and the deputy district attorney assigned to the case, C.J. Mody, observed the video-recorded interviews through a one-way mirror.

Sieckman, Mody, and the interviewer found the girls' accounts of the molestation to be credible and, as a result, decided to arrest Quinn. According to Quinn, on August 28, 2012, he was approached by LMPD officers while visiting Sottile at the hospital, where she was recovering from a medical procedure. Two of the officers asked to speak with Quinn in private. Quinn complied, and the officers told him that H.K. and E.K. had accused Quinn of touching them inappropriately. Quinn vehemently denied the allegations.

The officers arrested Quinn and transported him to the police station, where he was interrogated and shown the video of H.K.'s interview with the psychologist. According to Quinn, in the video H.K. told the interviewer that Quinn would get into bed with her and move his hips back and forth against her, that she could feel something hard in his shorts, and that she then felt wetness and there was gooey stuff spraying out. Quinn described H.K.'s demeanor in the interview as "bizarre" and "rehearsed." After

---

2 The Kellers also contacted their family law attorney to obtain advice on how best to protect the girls from Quinn. In family court, Christopher successfully sought a restraining order protecting H.K. and E.K from Quinn and an order granting him full custody of the girls.

seeing the video, Quinn told the interrogating officer that he had a medical condition that made H.K.'s account impossible.

The officer then pulled out a stack of photocopied documents and asked Quinn whether he knew that H.K. kept a journal at the Kellers' house. Quinn responded that he did not. The officer explained that H.K. had a journal in which she "asks God questions . . . and then God answers her and tells her what to do." The officer explained that H.K. wrote in the journal, "Should I tell my mom what my stepfather did to me" and "Don't forget to tell them that he stared at your privates during your doctor visit." In response, Quinn maintained his innocence and stated that he did not take H.K. to doctor visits. The allegations of molestation were subsequently reported in the press and Quinn was fired from his job as the star of a reality television show.

After making bail and prior to his arraignment, Quinn retained attorney Richard Berkon as defense counsel. Berkon began working on Quinn's defense and, with Quinn's permission, obtained Quinn's medical records documenting that he was being treated for erectile dysfunction and retrograde ejaculation at the time of the alleged molestation.[3] Berkon provided the records to Mody, and Quinn also gave his treating physicians permission to speak with the district attorney's office. Berkon also provided Mody with photographs of the girls' bedroom in Quinn and Sottile's home. The photographs showed the layout of the bedroom and the sleeping arrangements. When H.K. and E.K. stayed

---

[3] In his declaration in opposition to the Kellers' anti-SLAPP motion, Berkon described retrograde ejaculation as semen being discharged into the bladder rather than through the penis.

with Quinn and Sottile, they shared a bedroom with Quinn's 16- and 13-year-old daughters. The room had a bunk bed adjacent to the wall, with a double bed on the bottom that H.K. and E.K. shared, while one of Quinn's daughters slept on the top bunk and the other slept in a trundle bed abutting the bottom bunk.

In order to have engaged in the acts as described by H.K. and E.K., Quinn would have had to either commit the acts with both H.K. and E.K. in the bed with him and his teenage daughters sleeping in beds above and next to him, or have lifted E.K. out of the bed, over his daughter sleeping in the trundle, taken E.K. to another room, then returned to molest H.K. in the bottom bunk bed again with his daughters asleep nearby. Berkon also provided medical records to Mody showing that Quinn had suffered serious spinal injuries when a vehicle he was traveling in was hit by a rocket propelled grenade while he was serving as a Marine in Iraq in 2003. A letter from Quinn's treating physicians explained that after the injury, Quinn underwent "anterior and posterior lumbar fusion surgeries," and that Quinn suffered from "severe chronic pain with painful limited range of motion in his lumbar spine." The physician opined that Quinn was "unable to bend at the waist and lift a great amount of weight" and advised Quinn to "avoid any type of vocation that requires a significant amount of stooping, bending, or lifting greater than 10 lbs on a consistent basis."

Berkon provided additional information to Mody that he discovered in the course of his investigation. To refute the Kellers' allegations that H.K. and E.K. were fearful of Quinn, he gave Mody family photographs purporting to show Quinn and H.K. and E.K. interacting in a normal, loving fashion and a book H.K. made for Quinn in 2011 in which

H.K. referred to Quinn as "Daddy Tommy" and expressed affection toward Quinn. Berkon also gave Mody Quinn's work schedule showing that Quinn was out of town for some of the period of time during which the molestation was alleged to have occurred.

In order to prove that Quinn had not attended any of H.K.'s doctor's visits, Berkon provided Mody with the name and telephone number of H.K.'s pediatrician and an authorization allowing the doctor to speak with the district attorney's office. Berkon also gave Mody H.K.'s report cards to refute Carie's statements to investigators that H.K.'s personality had changed as a result of the alleged molestation. According to Berkon, the report cards showed that H.K. was performing well in school. Berkon also told Mody that Sottile had reported that H.K.'s teacher was concerned that a parent was assisting her with assignments because her work was above grade level. At Mody's request, Berkon provided him with contact information for the teacher.

Berkon thought that the statement contained in H.K.'s journal that she should not "forget to tell them that your stepfather was staring at your privates during your doctor appointment" was odd because it was written in the third person and as a directive. Berkon was suspicious that the person who was helping H.K. with her homework might also have coached H.K. to make the allegations against Quinn. Based on this suspicion, Berkon asked Quinn and Sottile to look through H.K.'s school work to see if there was any evidence that someone was "ghostwriting homework for H.K." Sottile discovered a copy of an assignment written in Carie's handwriting that H.K. had then copied in her own handwriting. When Sottile asked H.K. about the assignment, H.K. said that Carie

had written it for her. Before Berkon could provide Mody with this information, Berkon was notified that the district attorney was not going to pursue any charges against Quinn.

B

The Instant Action

In August 2014, Quinn filed his complaint in San Diego Superior Court asserting four causes of action against the Kellers: violation of Penal Code section 11172, subdivision (a); IIED; abuse of process; and negligence. The complaint was served on the Kellers in March 2015. In August 2015, the Kellers filed their anti-SLAPP motion, with supporting declarations by Chris, Carie, Sieckman, and Mody. Quinn opposed the motion and in support, submitted his own declaration and additional declarations by Sottile and Berkon, as well as the documentary and photographic evidence that Berkon had collected during his investigation. The Kellers' reply to the opposition included a further declaration by Carie, and objections to some of Quinn's evidentiary submissions.

Before the hearing on the Kellers' motion, the trial court issued a tentative ruling granting the Kellers' motion with respect to Quinn's claims for IIED, abuse of process, and negligence, and denying the motion as to Quinn's claim for violation of Penal Code section 11172, subdivision (a). After hearing counsel's arguments, the court overruled the Kellers' evidentiary objections and took the matter under submission. The court issued its final order several days later, modifying its tentative order.

The court's final order concluded that all of Quinn's claims arose from protected activity, and that Quinn failed to show a probability of prevailing on his claims for abuse of process and negligence because the claims were barred by the litigation privilege

under Civil Code section 47, subdivision (b). The court denied the motion with respect to Quinn's claims for violation of Penal Code section 11172, subdivision (a) and IIED, concluding that Quinn had met his burden to show a probability of prevailing based on the evidence that suggested that the Kellers had coached H.K. and E.K. to falsely accuse Quinn of sexual abuse. The Kellers timely filed their notice of appeal.

DISCUSSION

I

Law Governing anti-SLAPP Motions

Section 425.16 sets a procedure for striking "lawsuits that are 'brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.' (§ 425.16, subd. (a), added by Stats.1992, ch. 726, § 2, p. 3523.) Because section 425.16 allows for the early dismissal of SLAPP suits, it is often called the 'anti-SLAPP' statute." (*Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal.4th 192, 197.) Under section 425.16, the "trial court evaluates the merits of the lawsuit using a summary-judgment-like procedure at an early stage of the litigation." (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 192.)

The statute provides in pertinent part: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).) Resolution of an anti-SLAPP motion "thus involves

two steps. 'First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one "arising from" protected activity. [Citation.] If the court finds such a showing has been made, it then must consider whether the plaintiff has demonstrated a probability of prevailing on the claim.' " (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 819-820.) " 'Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning *and* lacks even minimal merit—is a SLAPP, subject to being stricken under the statute.' " (*Id*. at p. 820.)

For purposes of both prongs of an anti-SLAPP motion, "[t]he court considers the pleadings and evidence submitted by both sides, but does not weigh credibility or compare the weight of the evidence. Rather, the court's responsibility is to accept as true the evidence favorable to the plaintiff . . . ." (*HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th 204, 212.) With respect to the second prong, "in order to establish the requisite probability of prevailing (§ 425.16, subd. (b)(1)), the plaintiff need only have ' "stated and substantiated a legally sufficient claim." ' [Citations.] 'Put another way, the plaintiff "must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." ' " (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89 (*Navellier*).)

"The second prong . . . is considered under a standard similar to that employed in determining nonsuit, directed verdict or summary judgment motions." (*Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 672-673.) A plaintiff "need only establish

that his or her claim has 'minimal merit' [citation] to avoid being stricken as a SLAPP." (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291.) "Review of an order granting or denying a motion to strike under section 425.16 is de novo. [Citation.] [Like the trial court, we] consider 'the pleadings, and supporting and opposing affidavits . . . upon which the liability or defense is based.' (§ 425.16, subd. (b)(2).) However, we neither 'weigh credibility [nor] compare the weight of the evidence. Rather, [we] accept as true the evidence favorable to the plaintiff [citation] and evaluate the defendant's evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law.' " (*Id*. at p. 269, fn. 3.) "If the trial court's decision is correct on any theory, we must affirm the [anti-SLAPP] order." (*San Diegans for Open Government v. Har Construction, Inc.* (2015) 240 Cal.App.4th 611, 622.)

II

Evidentiary Issues

The Kellers first contend that the trial court abused its discretion by admitting certain evidence that Quinn submitted in opposition to their anti-SLAPP motion. Specifically, the Kellers assert that the statements in Quinn's declaration that reference H.K.'s journal were inadmissible hearsay. Quinn responds that the trial court properly overruled the Kellers' evidentiary objections because the objections lacked sufficient specificity.

The evidence presented by the parties in a SLAPP motion must be competent and admissible. (*Paiva v. Nichols* (2008) 168 Cal.App.4th 1007, 1017.) As a result, "[r]ulings on the evidentiary objections are necessary before the trial court or this court

can determine whether [the plaintiff] has presented admissible evidence that demonstrates a probability of prevailing on the merits of her claims." (*Hall v. Time Warner, Inc.* (2007) 153 Cal.App.4th 1337, 1347-1348.) " '[T]he proper view of "admissible evidence" for purposes of the SLAPP statute is evidence which, by its nature, is capable of being admitted at trial, i.e., evidence which is competent, relevant and not barred by a substantive rule. Courts have thus excluded evidence which would be barred at trial by the hearsay rule, [citation] or because it is speculative, not based on personal knowledge or consists of impermissible opinion testimony. [Citation.]' " (*Gallagher v. Connell* (2004) 123 Cal.App.4th 1260, 1267.) " "On a SLAPP motion "[a]n assessment of the probability of prevailing on the claim looks to *trial*, and the evidence that will be presented at that time." [Citation.]' " (*Ibid*.) On appeal, we "review a ruling on an evidentiary objection in connection with a special motion to strike for abuse of discretion." (*Hall*, at p. 1348, fn. 3.) As with any review of a discretionary determination, the trial court abuses its discretion if its ruling rests on an error of law. (See *People v. Neely* (1999) 70 Cal.App.4th 767, 776 ["The trial court does not have discretion to depart from legal standards"].)

The Kellers have failed to show that the trial court abused its discretion by overruling their evidentiary objections. As stated, the Kellers objected to the statements in Quinn's declaration reciting what LMPD officers said to him about H.K.'s journal after he was arrested. Specifically, the Kellers objected to the statements in paragraphs 12-14 of Quinn's declaration, in which he states: "an officer pulled out a stack of photocopies that was held together on top with a black paperclip. He asked if I knew that H.K. kept a

journal at Chris and Carie Keller's house. I said that I did not. One officer explained that H.K. kept a journal called 'Talks to God' or something similar. He said that H.K. asks God questions in this journal and then God answers her and tells her what to do . . . . [¶] One officer said that H.K. wrote in the journal, 'Should I tell my mom what my step-father did to me' or words to that effect. The officer asked what I thought of that. I said that it means nothing to me. [¶] The officer then said that H.K. wrote in the journal 'Don't forget to tell them that he stared at your privates during your doctor visit.' " The Kellers contend that these statements are inadmissible hearsay.

The statements consist of two ostensible layers of hearsay—Quinn repeating statements made to him by LMPD officers, who in turn were reciting statements written by H.K. in her journal. However, these statements were not introduced for their truth, i.e. to show that Quinn looked at H.K.'s private parts while at the doctor or that Quinn had done something to H.K. that H.K. did not know whether she should tell her mother about. Rather, the statements were introduced to support the inference that someone was coaching H.K. because of the unusual form of the writing. Additionally, the statement in which H.K. questioned whether to tell Sottile "what my step-father did to me" was also introduced to support an inference that the language used, specifically H.K. referring to Quinn as her stepfather and not as "Daddy Tommy," showed someone else's involvement. The statements, therefore, were not inadmissible hearsay. (See Evid. Code § 1200, subd. (a) [" 'Hearsay evidence' is evidence of a statement that was made other than by a witness while testifying at the hearing and *that is offered to prove the truth of the matter stated*."], italics added.)

The Kellers also argue that the trial court improperly overruled their objections to Berkon's statements that he was suspicious of the Kellers because of the form of the purported journal entries. The Kellers assert that Berkon's statement that it would be unusual for a 10-year-old to talk to "herself in the third person" was inadmissible because Berkon lacked personal knowledge of the statement and did not have sufficient expertise to give such an opinion. These arguments are not well taken. Even if Berkon lacked personal knowledge, the statements were properly before the court by way of Quinn's declaration. The Kellers, therefore, were not unfairly prejudiced by their admission. Further, Berkon's statement that he thought the form of the writing was odd was not an expert opinion. Rather, Berkon was describing the reason he asked Quinn and Sottile to look for other evidence suggesting that the Kellers might have coached H.K.

Finally, even if the evidence was erroneously admitted, the Kellers have not shown that the error was prejudicial. As we discuss, even without the statements concerning H.K.'s journal and Berkon's investigation, Quinn met his burden to show a probability of prevailing on his claims for violation of Penal Code section 11172, subdivision (a) and IIED.

III

Probability of Prevailing

The remaining question on appeal relates to the second step of the anti-SLAPP analysis, that is, whether Quinn met his burden to establish a probability of prevailing on his claims under Penal Code section 11172, subdivision (a) and for IIED. The Kellers contend that Quinn failed to make this showing.

A

"[I]n order to establish the requisite probability of prevailing (§ 425.16, subd. (b)(1)), the plaintiff need only have ' "stated and substantiated a legally sufficient claim." ' [Citations.] 'Put another way, the plaintiff "must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." ' " (*Navellier, supra*, 29 Cal.4th at pp. 88-89.) As the Kellers recognize, " ' "the court does not weigh the credibility or comparative probative strength of competing evidence." ' " (*Kenne v. Stennis* (2014) 230 Cal.App.4th 953, 962, Italics omitted.) Rather, " '[t]he court's responsibility is to accept as true the evidence favorable to the plaintiff.' " (*Daniels v. Robbins* (2010) 182 Cal.App.4th 204, 215.)

"Section 11172 provides immunity to individuals who report child abuse to the proper authority. This immunity is absolute for mandated reporters and qualified for other individuals who report child abuse (voluntary reporters). A voluntary reporter faces potential liability for reporting potential child abuse only if it is proven that 'a false report was made and the person knew the report was false or [made the report] with reckless disregard of the truth or falsity of the report.' (§ 11172(a).) '[A]ny person who makes a report of child abuse or neglect known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused.' (*Ibid.*)" (*Chabak v. Monroy* (2007) 154 Cal.App.4th 1502, 1510.) Thus, for Quinn's claim under this provision to survive the Kellers' anti-SLAPP motion, Quinn was required to present "evidence that

[the Kellers] made knowingly false reports of child abuse." (*Siam v. Kizilbash* (2005) 130 Cal.App.4th 1563, 1581.)

For Quinn's IIED claim to survive, he was required to show: " '(1) outrageous conduct by the defendant[s]; (2) the defendant[s'] *intention of causing or reckless disregard of the probability of causing emotional distress*; (3) the plaintiff's suffering severe or extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the defendant's outrageous conduct.' [Citation.] 'Conduct, to be " 'outrageous' " must be so extreme as to exceed all bounds of that usually tolerated in a civilized society.' " (*Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1259, italics added.) There is no dispute that the conduct alleged by Quinn, specifically coaching H.K. and E.K. to falsely accuse him of sexual abuse, supports Quinn's IIED claim.

B

We agree with the trial court that Quinn satisfied his burden at this stage of the proceedings to show "a 'minimum level of legal sufficiency and triability.' " (*Grewal v. Jammu* (2011) 191 Cal.App.4th 977, 989.) As an initial matter, Quinn presented competent evidence that, if credited, showed that he was not capable of obtaining an erection or ejaculating onto H.K., and therefore, that he was not capable of committing the crime as alleged, during the timeframe in which the alleged abuse occurred. Specifically, Quinn's own testimony about his medical condition, the documentation from his treating physicians concerning his erectile dysfunction and retrograde ejaculation, and Sottile's statement of her personal knowledge of Quinn's medical condition, all showed

that Quinn was not physically capable of abusing H.K. in the manner she described in her interview with the forensic psychologist. Assuming the truth of Quinn's evidence concerning his medical condition, as we must, the uncontested fact that the Kellers were not aware of Quinn's medical condition supports an inference that someone had coached H.K. and E.K. to make the allegations against Quinn, since H.K. and E.K., at ages 10 and eight, were too young to have conceived of the very specific sexual abuse they reported on their own.[4]

Similarly, Quinn's evidence of (1) the configuration of the minors' bedroom when they slept at Quinn and Sottile's home and (2) his back injury supported his assertion that the abuse allegations were false and, therefore, that the Kellers had coached the minors to make the allegations. If the evidence is credited, as it must be, it also supports a finding that the abuse described by H.K. could not have occurred both because of the sleeping arrangements and because Quinn could not have lifted E.K. out of the bunk bed over his teenage daughter, as H.K. alleged. Additionally, the uncontested fact that Christopher had been engaged in a long custody battle with Sottile supports Quinn's contention that the Kellers were motivated to coach H.K. and E.K. to accuse Quinn of sexual abuse.[5]

---

4 Quinn's statement that H.K. looked rehearsed in the video of the psychologist's interview, which he was shown after his arrest, was additional evidence from which a trier of fact could infer that the Kellers coached H.K.

5 The Kellers argue that this fact should be ignored because to credit it would discourage former spouses engaged in custody disputes from reporting sexual abuse, contravening the intent of Penal Code section 11172 to increase the reporting of child abuse by third parties. The statute's liability shield, however, exempts only reports that are "known to be false or [that are made] with reckless disregard of the truth or falsity of

We agree with the trial court that this evidence constitutes " ' "a sufficient prima facie showing of facts to sustain a favorable judgment" ' " on Quinn's claims under Penal Code section 11152, subdivision (a) and for IIED.[6] (*Navellier*, *supra*, 29 Cal.4th at p. 89.)

Further, the testimony of Quinn and Berkon concerning H.K.'s journal also supports an inference that the Kellers coached H.K. and her sister to falsely accuse Quinn

---

the report." (Pen. Code, § 11172, subd. (a).) This strict limitation serves to deter the filing of meritless lawsuits.

[6] The Kellers rely on *Daniels v. Robbins* (2010) 182 Cal.App.4th 204 (*Daniels*) and *Dwight R. v. Christy B.* (2013) 212 Cal.App.4th 697 (*Dwight R.*) in support of their contention that Quinn did not provide sufficient evidence to show that they knew that the sexual abuse allegations were false. This reliance is misplaced. Unlike Quinn, the plaintiffs in *Daniels* and *Dwight R.* failed to meet their evidentiary burdens to produce affirmative evidence to overcome the defendants' showing that their claims could not prevail. In *Daniels* the appellate court affirmed the trial court's order granting the defendant attorneys' anti-SLAPP motion to dismiss the plaintiff's malicious prosecution claim. The *Daniels* plaintiff did not present any evidence showing that the defendant attorneys filed the underlying defamation claim against him maliciously. Rather, the plaintiff pointed only to the fact that the attorneys relied on their client's version of events in filing the lawsuit without conducting research to verify their client's story, and presented no evidence the attorneys actually knew that the client's claims were false. (*Daniels*, at p. 227.) Following established law, the *Daniels* court held that "evidence of the [a]ttorneys' possible negligence in conducting factual research [was] not enough on its own to show malice." (*Id.* at p. 225.) In *Dwight R.*, the Court of Appeal affirmed the trial court's order granting the defendant's anti-SLAPP motion and dismissing the plaintiff's claims for federal civil rights violations. (*Dwight R.*, at p. 703.) The plaintiff alleged that the defendant, who was his young daughter's therapist, conspired with his former wife and mother-in-law to have his daughter falsely accuse him of sexual abuse. (*Id*. at p. 706.) To show a probability of prevailing on his claims, the plaintiff was required to establish that the therapist had conspired with a state actor. The court concluded that the plaintiff had not met his burden because he had presented *no* evidence to support a reasonable inference that the therapist was "in cahoots" with any state actor. (*Id*. at pp. 714-715.) In contrast, as discussed, Quinn produced evidence that supports the inference that the Kellers knew that the allegations of sexual abuse were false.

of abuse. As the trial court concluded, if this evidence is credited it "suggests that H.K. was coached by [the Kellers], which leads to the inference that [they] knew the report of child molestation was false." In sum, the Kellers ask this court to make credibility determinations to reject the evidence put forth by Quinn. This task was beyond the reach of the trial court in deciding the anti-SLAPP motion, and is also beyond this court's reach on appeal.

DISPOSITION

The order is affirmed. Respondent to recover costs of appeal.

AARON, J.

WE CONCUR:

HUFFMAN, Acting P. J.

HALLER, J.